



# Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

## **Memorandum**

**Date:** May 17, 2022

**To:** Richard Conescu, Chair, & Members, Zoning Board of Adjustment

**From:** Robert Price, Planning & Zoning Administrator

**Subject:** **Michael & Shana Starr (petitioners) and 598 DW Highway LLC (owner)** – Variances under Section 3.02 of the Zoning Ordinance to permit a multi-family residential density of one unit per 4,372 square feet whereas 40,000 square feet per unit is required (6 units whereas 0 are permitted), a multi-family residence on a lot with a depth of 125 feet whereas 200 feet is required, a front setback of 30 feet whereas 50 feet is required along DW Highway, and a Northerly and Southerly side setback of 40 feet each whereas 50 feet is required. The parcel is located at 598 DW Highway in the C-1 (Limited Commercial), Aquifer Conservation, Elderly Housing Overlay Districts and the Wellhead Protection Area. ZBA Case #2022-20

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The following information is provided to aid in your consideration of the above referenced case. Additional background and application materials are included in your packet.

### **Background & Project Description**

Tax Map 6D-1, Lot 028 is located at 598 DW Highway in the C-1 (Limited Commercial) District. The subject property is 0.6 acres and will be serviced by municipal water (MVD) and municipal sewer. The lot is currently vacant, with the exception of a small garage (the previous structure last used as office space was demolished several years ago) and is abutted by a mix of residential properties (on Wheeler Street) and commercial uses (Charlie's Diner, Tortilla Flat, and a small office use).

The petitioner seeks to construct six units of multi-family residential on a non-conforming lot of record. The Zoning Board of Adjustment granted a Special Exception in July 2021 to permit a residential use on this lot, but the subsequent variance applications for an eight-unit duplex-style development were withdrawn. Given that those applications were withdrawn, the current petitioner is able to proceed with their request. The Special Exception remains valid until July 2023, and is being utilized for the subject petition.

In order for the project to be possible, five variances are required in order to permit the petitioner to proceed to the Planning Board for site plan review:

- Variance to permit a residential density of 1 multi-family residential unit per 4,372 square feet whereas 1 per 40,000 square feet is required. The site has 0.6 acres (26,024 square feet), which would calculate to zero units being permitted (as the minimum 40,000 square feet required per unit is not possible on a lot of 26,024 square feet). This is a density **9.15 times greater** than the ordinance permits.

- Variance to permit a multi-family residence on a lot with a depth of 125 feet whereas 200 feet is required;
- Variance to permit a multi-family residence on a lot with a front setback of 30 feet whereas 50 feet is required; and
- Variances to permit northerly and southerly side setbacks of 40 feet each whereas 50 feet is required.

**Standard of Review:**

It is the burden of the petitioner to demonstrate that the five criteria for the granting of the Variances under Section 3.02 of the Zoning Ordinance to permit a multi-family residential density of one unit per 4,372 square feet whereas 40,000 square feet per unit is required (6 units whereas 0 are permitted), a multi-family residence on a lot with a depth of 125 feet whereas 200 feet is required, a front setback of 30 feet whereas 50 feet is required along DW Highway, and a Northerly and Southerly side setback of 40 feet each whereas 50 feet is required, are met.

**Should the Board find that the petition meets the variance criteria; Staff recommends that any approval be conditioned upon the following:**

1. The petitioner shall obtain site plan approval from the Planning Board for the proposed multi-family development.

Ec: Michael Starr, petitioner  
Matthew Routhier, TF Moran, Inc.  
Building Department Staff  
John Manuele, Fire Marshal  
Dawn Tuomala, PE, Deputy Director of Public Works/Town Engineer  
Cc: Zoning Board File